

1 GLYNN & FINLEY, LLP
2 CLEMENT L. GLYNN, Bar No. 57117
3 ADAM FRIEDENBERG, Bar No. 205778
4 One Walnut Creek Center
5 100 Pringle Avenue, Suite 500
Walnut Creek, CA 94596
Telephone: (925) 210-2800
Facsimile: (925) 945-1975
Email: cglynn@glynnfinley.com
afriedenber@glynnfinley.com

6 Attorneys for Defendant and Counter-Plaintiff
7 ConocoPhillips Company

11 HOUTAN PETROLEUM, INC.) Case No. 3:07-cv-5627 SC
12 Plaintiff,)
13 vs.)
14 CONOCOPHILLIPS COMPANY, a Texas)
corporation and DOES 1 through 10,)
Inclusive)
15 Defendants.)
16)
17)
18)
-----)
) Trial Date: August 18, 2008
) Time: 10:00 a.m.
) Courtroom: 1
) Before: Hon. Samuel Conti

20 Defendant and Counter-Plaintiff ConocoPhillips Company (“ConocoPhillips”) hereby
21 moves in limine for an order excluding presentation to the jury of any argument or evidence of:
22 1) fuel or oil prices; 2) references to “Big Oil;” or 3) evidence of ConocoPhillips’ size, profits
23 and wealth.

24 I. INTRODUCTION

25 This case is about whether ConocoPhillips made a bona fide offer under the PMA.
26 ConocoPhillips' size, profits, wealth or business relationships are entirely irrelevant. The prices
27 of oil, gasoline, or other fuels are likewise not pertinent. Though much in the news, these
28 matters have no bearing on this dispute. Such information has no purpose other than to fan the

1 flames of prejudice against ConocoPhillips at a time when the public is highly concerned about
 2 pump prices.

3 **II. ARGUMENT**

4 ConocoPhillips is an international company. It is the third-largest integrated energy
 5 company in the United States, based on market capitalization and oil and natural gas proved
 6 reserves and production; and the second-largest refiner in the United States. ConocoPhillips
 7 operates in more than 40 countries and has approximately 33,100 employees worldwide and
 8 assets of \$190 billion. Houtan Petroleum, Inc., on the other hand, is a much smaller, local
 9 business.

10 Evidence of a party's wealth is irrelevant to the issue of liability. "It has been widely held
 11 by the courts that have considered the problem that the financial standing of the defendant is
 12 inadmissible as evidence in determining the amount of compensatory damages to be awarded."
 13 *Geddes v. United Financial Group*, 559 F.2d 557, 560 (9th Cir. 1977). Such evidence "injects
 14 into the damage determination a foreign, diverting and distracting issue which may effectuate a
 15 prejudicial result." *Id.*

16 Moreover, the PMPA explicitly provides that a claim for punitive damages under the
 17 PMPA is determined by the Court, not a jury. 15 U.S.C. § 2805(d)(2). Thus, in the event any
 18 portion of the case is tried to a jury, it would be improper to discuss ConocoPhillips' size, profits,
 19 or wealth in the presence of the jury. Such information is highly prejudicial and has no probative
 20 value to any issue to be determined by the jury.

21 ConocoPhillips' profits and wealth are therefore completely irrelevant. Such evidence, or
 22 general references to "Big Oil" or fuel prices would serve no purpose other than to mislead
 23 and/or confuse the issues and unfairly prejudice ConocoPhillips in the eyes of the jury. The
 24 Court's order in limine excluding such evidence is therefore appropriate.¹

25
 26 ¹ Plaintiff's revenues, pricing, margins and/or profits during the time he has operated the station
 27 using ConocoPhillips' equipment and improvements, but without paying rent or having any
 28 contractual or other right to keep such property, may be relevant to ConocoPhillips' damages and
 other remedies available on ConocoPhillips' counterclaims. Likewise, Plaintiff's post-
 termination operations and revenues may be relevant to ConocoPhillips' defenses to Plaintiff's
 claims. This motion, of course, does not address such evidence, which ConocoPhillips reserves
 the right to present, as appropriate.

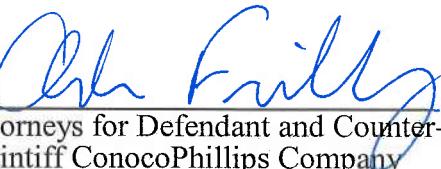
1 **III. CONCLUSION**

2 For the above reasons, ConocoPhillips respectfully requests that the Court issue an order
3 prohibiting references by Plaintiff, or its witnesses, to: 1) fuel or oil prices; 2) references to "Big
4 Oil;" or 3) evidence of ConocoPhillips' size, profits and wealth.

5 Dated: August 8, 2008

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

GLYNN & FINLEY, LLP
CLEMENT L. GLYNN
ADAM FRIEDENBERG
One Walnut Creek Center
100 Pringle Avenue, Suite 500
Walnut Creek, CA 94596

10 By 
11 Attorneys for Defendant and Counter-
12 Plaintiff ConocoPhillips Company